



# Attorney General

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Robert R. Corbin

October 26, 1983

## LAW LIBRARY ARIZONA ATTORNEY GENERAL

Mr. Aaron Kizer  
Registrar of Contractors  
1818 West Adams  
Phoenix, AZ 85007

Re: I83-120 (R83-091)

Dear Mr. Kizer:

We are writing in response to your letter dated July 1, 1983, asking whether the increased limits for the Contractors Recovery Fund set out in Ch. 143, 1983 Ariz. Laws, 1st Reg. Sess. (Chapter 143) apply to all judgments entered after the statute's effective date, July 27, 1983. We think the increased limits apply only to judgments entered on claims that arose on or after July 27, 1983.

In 1981, the Arizona Legislature created the Contractors Recovery Fund (Fund) limiting recovery to \$5,000.00 per claim and \$10,000.00 per contractor's license. The Arizona Legislature in Chapter 143 increased the Fund limits for each individual claim by striking the word "five" in A.R.S. § 32-1132.A, A.R.S. § 32-1136.C.4 and A.R.S. § 32-1136.D as that word relates to claim limits and substituted the word "fifteen". Similarly, the Legislature in Chapter 143 increased the maximum liability of the Fund per contractor's license by striking the word "ten" in A.R.S. § 32-1139.A as it relates to Fund liability and substituted the word "seventy five".

A.R.S. § 1-244 states that no statute is retroactive unless expressly declared therein. Chapter 143 contains no language expressing an intent that the new limitations are to be applied retroactively either to claims which arose or to actions which had been commenced prior to the statute's effective date.

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Arizona courts have grafted an exception onto the statute proscribing retroactivity. Under the exception, a statute does have retroactive effect if it is merely procedural and does not affect an earlier established substantive right.<sup>1/</sup> Although there is no precise definition of either term, it is generally agreed that a substantive law creates, defines and regulates rights, while a procedural one prescribes the method of enforcing such rights or obtaining redress.<sup>2/</sup> Arizona courts have held that a rule affecting the measure of damages is a substantive right, so that a change in the law affecting the measure of an injured person's right of recovery cannot be applied retroactively.<sup>3/</sup>

Accordingly, we conclude that the increased limits for the Fund established by the Arizona Legislature in Chapter 143 may be applied only prospectively to those judgments whose causes of action arose on or after July 27, 1983.

Sincerely,



BOB CORBIN  
Attorney General

BC:ML:pd

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1. Bouldin v. Turek, 125 Ariz. 77, 607 P.2d 954 (1979).
  2. Allen v. Fidler, 118 Ariz. 95, 574 P.2d 1314 (Ct. App. 1978).
  3. Id. and Bouldin v. Turek, supra. The Supreme Court of Hawaii recently faced this identical issue regarding the Hawaiian Real Estate Recovery Fund. In Clark v. Cassidy, 64 Haw. 74, 636 P.2d 1344 (1981), the Hawaii Supreme Court held that where there were no words or expression that an amendment to the real estate recovery fund, which had been established to provide a fund from which unsatisfied judgments against real estate brokers and salesmen could be paid to consumers, should operate retrospectively, the amendment increasing limits of recovery could not be applied to a claim or right of action that arose prior to its effective date.